

Alcorn



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Schmid & Kalhert GmbH & Company KG
File: B-233467
Date: February 13, 1989

DIGEST

Protest that hand-carried proposal delivered to a location other than that specified in solicitation was not late because it was in the possession of the federal government before the time proposals were due, and that the agency's failure to assure that the proposal was forwarded to the proper location constituted mishandling such that the proposal should be deemed timely, is denied; to be timely, a proposal must be received in the place designated for the receipt of proposals by the required time, and agency's failure to forward proposal delivered to other than the specified location does not constitute mishandling.

DECISION

Schmid & Kalhert GmbH & Company KG protests the rejection of its offer as late under request for proposals (RFP) No. DAJA76-88-R-0560, issued by the Department of the Army, Frankfurt, Germany, for local transportation of government-owned furniture.

We deny the protest.

The closing date for receipt of proposals was October 14, 1988 at 2:00 p.m. The RFP required that hand-carried offers be received in the reception area of the Regional Contracting Office-Frankfurt (RCO), Eschborner Landstrasse 130-132, Frankfurt, Germany. Schmid & Kalhert's hand-carried offer was deposited in the reception area of a different location, the United States Army Contracting Center-Europe (the Center), Eschersheimer Landstrasse 163 at 12:12 p.m. on October 14. Subsequently, on October 19, the RFP custodian at the Center found the protester's offer in the bid collection box and forwarded it to the RCO, which received it that same day at 2:00 p.m.

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Schmid & Kalhert does not dispute the facts, but argues that its proposal was late due to government mishandling since the Center improperly accepted its proposal, and then failed to timely forward it to the RCO. According, to the protester, it has been customary for the reception area at the Center, the location at which deposit was made, to serve as a central offer collection point for procurements in the Frankfurt area, and that it thus considered deposit of its offer in the Center's bid box to be a proper submission to the RCO. Furthermore, Schmid & Kalhert contends (attested to by a former Center employee) that it was customary to have an hourly delivery service for offers between the Center and the RCO on those days when offers were due at the Center. Alternatively, the protester argues in its comments on the agency report that the RFP instructions for delivery of hand-carried offers were ambiguous.

The Army denies that the Center's bid collection box was a central offer collection point for the Frankfurt area. According to the agency, the RCO where offers were to be deposited and the Center where Schmid & Kalhert's offer was deposited are physically separate offices that function independently, and are approximately 12 kilometers distant from each other. Further, the Army denies that the government "accepted" the protester's offer at the Center or took custody or control of it; rather, the agency reports that a security guard at the Center simply witnessed the deposit of the offer into the collection box after a representative of the protester had the offer time-date stamped. The agency explains that the 5-day period between deposit of Schmid & Kalhert's offer at the Center and discovery of it was due to the lack of Center solicitations with closing dates during the period. The agency states that while it does maintain a daily courier service between the Center and the RCO for its own use at the hours of 11:00 a.m. and 3:00 p.m., this is not a proposal forwarding service and, in any case, the protester here did not request use of the service. The Army points out that, even if this service was available for the protester's use, the subject offer still would have been late since the offer was deposited after 12:00 p.m., and the next available courier was at 3:00 p.m., which was too late for delivery to the RCO by the 2:00 p.m. closing.

An offer is late if it does not arrive at the office designated in the solicitation by the time specified. Silvics, Inc., B-225299, Feb. 24, 1987, 87-1 CPD ¶ 204. A hand-carried offer, if it arrives late, can only be considered if it is shown that the sole or paramount cause of the late receipt was some government impropriety after

receipt at the government installation, that made it impossible for the offeror to deliver the proposal on time. Id.; Federal Acquisition Regulation § 52.215.10. A late bid or proposal cannot be considered if the offeror or its agent significantly contributed to the late receipt by not acting reasonably in fulfilling its firm's responsibility to insure delivery to the proper place by the proper time. Eagle Int'l., Inc., B-229922, Mar. 1, 1988, 88-1 CPD ¶ 214.

We find no improper government action, and conclude that the protester did not fulfill its responsibility under the above standard. The solicitation clearly specified that the location for deposit of hand-carried offers was the reception area of the RCO at Eschborner Landstrasse 130-132. Under item 9, the solicitation indicated offers would be received "at the place specified in item 8, or if hand-carried, in the depository located in the reception area." Item 8 of the RFP, entitled "address offer to (if other than item 7)," was blank. Item 7, entitled "issued by," listed the RCO and the address Eschborner Landstrasse 130-132. Since there was no address given in item 8, it should have been clear to the protester that the address at which offers were to be sent and hand-carried was that given in item 7, Eschborner Landstrasse 130-132.

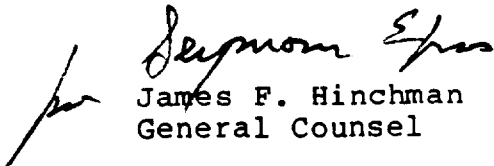
As there was only one address given in the RFP for deposit of offers, and Schmid & Kalhert did not deliver its offer to that address, we do not believe the firm acted reasonably in fulfilling its responsibility to insure delivery of its offer to the proper place. Contrary to the protester's assertion, receipt by the federal government at a place other than that designated in the solicitation does not satisfy the requirement for timely receipt in the specified office. Eagle Int'l., Inc., B-229922, supra.

The protester has presented no evidence that the Army ever established the Center as a central proposal receipt point, and the fact that there may have been some unofficial arrangement under which offers had been forwarded to the proper location in the past does not change our conclusion. We view the protester's reliance on this alleged practice as a risk the protester chose to take; it remained the protester's burden to assure timely delivery of its offer at the specified location. We note that this burden does not appear to have been a significant one, given that the location specified in the RFP was only 12 kilometers from the place the protester deposited its offer.

Schmid & Kalhert's contention that the RFP instructions for delivery of hand-carried offers were ambiguous is untimely. Our Bid Protest Regulations require that a protest based on

alleged improprieties in an RFP that are apparent before the closing date for receipt of initial proposals be filed by that date. 4 C.F.R. § 21.2(a)(1) (1988). Any ambiguity in the RFP instructions should have been apparent on the face of the solicitation. This allegation therefore is untimely, since the protest was not filed until after the October 14 closing date. In any event, as previously discussed, we consider the RFP instructions on hand-carried offers sufficiently clear, and therefore see no reason why they would have contributed to the late submission of the protester's proposal.

The protest is denied.


James F. Hinchman
General Counsel